

House Bill 376
February 12, 2013
Presented by Quentin Kujala
House Fish, Wildlife and Parks Committee

Mr. Chairman and committee members, I am Quentin Kujala, of the Montana Department of Fish, Wildlife and Parks (FWP). I am here in opposition House Bill 376.

This bill provides counties a mechanism to control, remove, or restrict game animals, including deer, elk, antelope, mountain lions, and bears. While a plan to do so must be approved by the department through the FWP Commission, thus giving the Commission "veto" power, there would be an expectation that a plan would be approved.

Per 87-1-301 MCA, the Fish, Wildlife, and Parks Commission (Commission) is responsible for setting the "policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law. Even with passage of this bill, this statute would still apply and would be the basis for review of any plan by the county. Given this, it is uncertain if a plan would be approved, thus creating conflict.

We see this bill as inadvertently creating problems that probably haven't been fully thought through, and based on those problems, question whether counties really want this bill as written.

The wording for this bill mirrors existing statute allowing cities to develop plans for control of game species that represent a threat to public health and safety. The difference is that within the larger cities, traditional population management using hunting generally is not allowed, so alternative mechanisms are necessary. That isn't the case for counties, where hunting is an effective game management tool. Also, the planning effort within large cities benefits from a single species focus (deer) and a very small area (city limits). These are not necessarily the circumstances to expect for counties given the larger geography and species diversity.

This bill also allows control of game species for economic impact purposes (line 7 in title) in counties, and expands that provision to cities. This is a very broad and undefined term. For example, in Helena, many of the complaints about urban deer were due to deer in yards or deer eating flowers. It is unclear if this constitutes economic impact, but if so and if expanded to a whole county, there could be significant impacts to game populations.

The game species affected by this bill are managed at a hunting district level, not a county level. For example, in Lewis and Clark County where we are today, there are all or parts of 17 different deer and elk hunting districts in four different administrative regions, most of which differ in terms of management objectives, allowable antlerless licenses, whether a special permit is required, etc. The county overlaps portions of at least two national forests, three different Wilderness Areas, other public lands, at least two different wildlife-oriented working groups, etc.

For species like elk, deer, and mountain lions, management is guided by statewide management plans that were subject to extensive public review and process. Annual or biennial season-

setting also includes additional public review and comment for regulations and quotas. The game damage program responds to site-specific damage that cannot be fully addressed with the general hunting seasons. This includes fencing stackyards with FWP-supplied materials and game damage hunts used to disperse the offending game animals.

Issues that arise when contemplating individual counties establishing and implementing separate game management plans include:

- It is unclear how a county's plan would overlap or integrate with existing statewide game management plans, regulations, licenses, permits, etc. – there could be potential conflict between the county's plan and current management plans, ARMs, and state statutes. Having both counties and the state establishing hunting seasons creates a high probability of social and legal conflict.
- In addition to conflict from the standpoint of county and state, this bill stands to confuse citizens and to separate and disaggregate inputs now going to the final decision authority (FWP Commission).
- If the county builds a plan, the assumption is that the county will review all relevant plans, statutes and ARM, and conduct all necessary public input processes.
- If a county adopts and implements a plan, the assumption is that the county would also cover the costs to implement that plan (similar to the Helena urban deer issue).
- The county would need to address necessary monitoring and collection of scientific data on which their plan would be based, as well as follow up monitoring to measure effectiveness and compliance with their plan. Most FWP survey and inventory is done to inform season setting. If FWP is no longer setting seasons in a particular area, it is unlikely that FWP would continue to do surveys in that area.
- Under this bill, counties would assume accountability and probably some liability associated with adopting their own game management plans. This could include statutory compliance as monitored by the Montana Legislature and the EQC. In addition, this bill sets up the potential for counties to be in the same position as the Department in the scrutiny it receives for contentious management decisions. The level of control given to counties by HB 376 may subject counties to the liability and litigation, just as the Department often faces. Even short of litigation, the counties could be right alongside the Department in having to answer to the public for the sometimes very controversial management decisions it makes.
- If a county is implementing a wildlife management plan to control, remove and restrict game animals, then the county may also need to address game damage, enforcement, private property concerns, and deviations from adopted species management plans (e.g., elk, IBMP) since all of these activities are part of management of game species. Many of these topics and their management are defined in statute.

- Based upon existing process in towns and cities exploring urban deer plans, the county would take the lead in any public input processes necessary for the county plan, up to and including preparation of any necessary MEPA analysis.
- Many hunting districts are "general season", whereby a general season license can be used in any applicable hunting district throughout the state. If a county regulation differed from the state's, then a general season license wouldn't work in those counties with special regulations, thus restricting and confusing hunter opportunity.
- For a species like bison (which this bill may be trying to get at), they have dual status as a game species (FWP) and a species in need of disease management (DoL). A county plan to control, remove, or restrict bison around YNP, even if approved by the FWP commission, may be in conflict with DoL authority.
- This bill appears to create separate fish and game agencies in each county, without addressing all of the nuances of doing so. This not only has large potential for conflict and procedural redundancy, but the public stands to suffer considerable confusion trying to engage the county process or the FWP process or both. Certainly we see that with some of the city deer discussions.
- There is currently a very large body law and process that looks to gather and incorporate county inputs into FWP Commission decisions without confusing the lines of authority.

Given all of these uncertainties, potential conflicts heightened by expectations and formal process at the county level, and unanswered questions relative to authorities, this bill stands to create more problems than it resolves and so is not good public policy. Legislation should do just the opposite. For this reason FWP recommends a "Do Not Pass" on HB 376.